



TC01682

Appeal number: TC/2011/05230

Late filing of personal tax return – reasonable excuse – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MR JOHN NASH

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: J. BLEWITT (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 17 November 2011 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 27 June 2011, HMRC's Statement of Case submitted on 29 August 2011 and the Appellant's Reply dated 5 October 2011.

DECISION

1. This is an appeal against fixed penalties totalling £200 imposed under section 93 (2) Taxes Management Act 1970 for the late filing of the Appellant's personal tax return for the year ending 5 April 2009.
2. The personal tax return was issued to the Appellant on 6 April 2009. The filing date for a paper return was 31 October 2009 or 31 January 2010 if filed online. The return was received by HMRC on 19 January 2011. The penalty notices were issued in the sum of £100 each on or about 16 February 2010 and 3 August 2010.
3. By Notice of Appeal dated 27 June 2011 the Appellant appealed against the penalties. The grounds relied upon are as follows: that the return was filed on 30 January 2010 within the time limit and a submission receipt reference number received. After numerous communications with HMRC the Appellant was advised to resend the return which occurred on 19 January 2011.
4. By email dated 5 October 2011 the Appellant stated that all reasonable endeavours were made to submit the return on time. Numerous attempts were made to resolve the issue at the earliest opportunity; the further fines are unfair and suggest that the Appellant did not acknowledge communication which was not the case.
5. HMRC's Statement of Case dated 29 August 2011 contends that the return was not received until 19 January 2011. HMRC records from the Online Services Team confirm that the Appellant logged in successfully on 30 January 2010 but did not submit the return. Had the return been submitted on 30 January 2010, it would not have been possible to submit the return on 19 January 2011. It is suggested that the Appellant viewed the return before the submission stage, at which point the submission receipt reference number is shown, but the process is not completed until the next page is selected to submit the return. Had the return been submitted an acknowledgement would have been issued immediately, confirming the same. HMRC records confirm that no such receipt was issued. Despite the first and second penalty notices being issued, the return was not submitted until 19 January 2011. There is no reasonable excuse in this case.
6. The Tribunal must determine questions of fact on the evidence before it on the basis of the balance of probability. Case law has made clear that in assessing the issue of reasonable excuse, the responsibility rests with the taxpayer to ensure that its tax obligations are met.
7. The Tribunal accepts the evidence of HMRC that although the Appellant logged in successfully on 30 January 2010 but did not submit the return. The Tribunal finds as a fact that had the return been submitted on 30 January 2010, it would not have been possible to submit the return on 19 January 2011. The Tribunal finds as a fact that the submission receipt reference number does not confirm that the return was successfully submitted. In the absence of an acknowledgement issued to the Appellant by HMRC confirming that submission had been successful, the Tribunal cannot be satisfied on the balance of probabilities that the return was submitted.

8. The Tribunal accepts that the Appellant took steps to resolve the problem, however the penalties imposed are correctly charged in accordance with legislation and, in the absence of a reasonable excuse lasting throughout the period of default, has no power to mitigate the penalties.

5 9. The Tribunal finds that the Appellant has advanced no other circumstances that would amount to a “reasonable excuse”.

10. The Tribunal finds that the Appellant does not have a reasonable excuse that existed throughout the period of default.

11. The appeal is dismissed and penalties confirmed.

10 12. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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TRIBUNAL JUDGE
RELEASE DATE: 20 December 2011

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